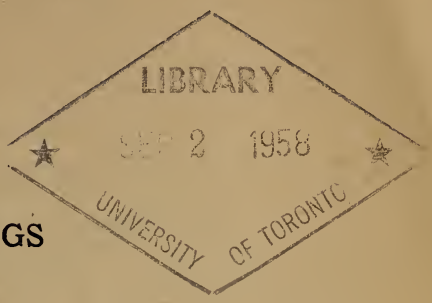
1958

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 4

THURSDAY, AUGUST 21, 1958

WITNESSES:

Mr. Donald Fleming, P.C., Minister of Finance. Dr. A. K. Eaton, Assistant Deputy Minister, Dept. of Finance. Mr. Ernest H. Smith, Finance Officer, Taxation Div., Dept. of Finance. Mr. W. I. Linton, Administrator, Succession Duties, Dept. of Nat. Revenue. Mr. A. L. De Wolf, Solicitor, Department of National Revenue. Mr. D. S. Thorson, Solicitor, Department of Justice.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

62223-3—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Gershaw	McLean
Baird	Golding	Monette
Beaubien	Gouin	Paterson
Bouffard	Haig	Pouliot
Brunt	Hardy	Power
Burchill	Hayden	Pratt
Campbell	Horner	Quinn
Connolly	Howard	Reid
(*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
		Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affimative."

J. F. MacNEILL,
Clerk of the Senate.

62223-3—1½

MINUTES OF PROCEEDINGS

THURSDAY, August 21, 1958.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Brunt, Connolly (*Ottawa West*), Croll, Euler, Haig, Kinley, Lambert, Leonard, Macdonald, Power, Taylor (*Norfolk*), Turgeon, White and Woodrow.—18.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Senate, and the Official Reporters of the Senate.

Consideration of Bill C-37, An Act respecting the Taxation of Estates was resumed.

The following witnesses were heard and questioned:

Mr. Donald Fleming, P.C., Minister of Finance.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

Mr. Ernest H. Smith, Finance Officer, Taxation Division, Department of Finance.

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Mr. A. L. De Wolf, Solicitor, Department of National Revenue.

Mr. D. S. Thorson, Solicitor, Department of Justice.

At 10.30 p.m. the Committee adjourned until Wednesday, August 27th, 1958, at 10.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, THURSDAY, August 21, 1958

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 8 p.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, it is 8 o'clock, and we have a quorum. The Minister is here, and I think we should proceed.

The first and most important item, I would suggest, Mr. Minister, so far as the committee is concerned is the item having to do with the treatment of pensions, and if you could deal with that you would be hitting at a question that is basic in the concern of the committee as to this whole bill.

I should state, as a preliminary, I think, the views—not the conclusions, bu the views of the committee in relation to it. There are two: One is the valuation of the pension itself, and the feeling that included in that capitalized value is an element of income tax, and that there should be some provision by which before tax is assessed the income tax element is deducted from the capitalized value ascertained in accordance with the bill. Secondly, there is a feeling in relation to the payment that it is very onerous to exact complete payment of the capital tax at once or on the installment basis of six years as provided in section 15, I think it is; and the suggestion here has been under consideration that the capital tax should be deducted annually from the pension payments at a rate not in excess of 15 per cent. If, of course, the pension is for a term of years that would have to be controlled by the period that the payments run. You could not lay out a program of payment that ran beyond the term of years, but only subject to that; and the restriction in relation to this treatment of pensions in general is this, where such pensions or superannuation payments are subject to income tax under the Income Tax Act, then this treatment is the treatment that it feels should be given. Now, I think I have stated it correctly.

Senator LEONARD: May I be permitted for one minute just to elaborate? First of all, in connection with the valuation of the pension benefit, I might say, Mr. Minister, that we were impressed by the representations that were made by the various witnesses; but I should say also that we have had most excellent information from your officers and were all very much impressed by what they have done in giving evidence before this committee.

The practical suggestion was made in dealing with the question of the valuation, of that kind of pension or superannuation benefit which is taxable in full under the Income Tax Act. The suggestion made to us was an attempt to perhaps spread that tax over the life expectancy so that the Government would not lose any tax, because what it lost by a short fall through the death of an annuitant prior to his life expectancy would be picked up again in the case of some who lived beyond him; but I think we realize that as practical difficulties, and that it really amounts to an income tax that hardly fits into an estate tax.

On the other hand, it seems to us that a precedent had been created particularly in the case of the self-employed retirement fund, where when income does go into a retirement fund it is allowed to come out on a flat rate of tax, notwithstanding it has gone in at some unknown rate of tax; and it seemed to us that it was not beyond the wit and ingenuity of the Government officials and of yourself to find some method of overcoming this double tax, and which we are all convinced is in existence, namely, that when the superannuation benefit or pension is valued for estate tax purposes no allowance is made for the fact that there is a potential tax liability for income tax in the payment still to come by reason of the fact that income tax has been deferred upon the payments that went in to make up that superannuation benefit. We are all agreed that the deferred income tax is properly payable, and it is a question of the valuation.

Now, in the endeavour to arrive at some method we thought the best way we could do it would be to enunciate the principle and then leave it in the hands of the Minister and of the department to find some practical way of applying that principle so that the suggestion we have came down to an amendment along those lines and in the section which says that no allowance shall be made for income tax and valuation; that is, section 26.

No allowance shall be made for income tax in valuing the property, which is section 26, but we will add a subsection which says,

> notwithstanding anything in subsection 1 where a superannuation or pension benefit is taxable under the Income Tax Act.

Those are the words used in the Income Tax Act to describe the only superannuation or pension benefit which is taxable under the Income Tax Act to the full amount of it as distinct from the content of it.

> There shall be deducted from a value of the said benefit as otherwise determined by this act an allowance for the income tax payable thereon and the minister shall by regulation prescribe the manner in which such allowance shall be determined.

What it should be is entirely in your hands, I think, whether it should be a table or a method or a flat rate as a practical solution to it, but it seems to us that the double tax does exist, that the principle of trying to avoid it should be recognized and that some practical method might be found by you and by your department to overcome that double tax.

Hon. Donald Fleming (Minister of Finance): Mr. Chairman and honourable senators, first let me express again my warm thanks for the opportunity extended to me of coming before you again at this meeting this evening to discuss matters which you have reserved for further consideration in the study you have conducted on this bill. You have set forth a pretty broad term of reference I think, Mr. Chairman, and I hope that I will remember all the points that have been raised and not need to have my memory jogged on them, but if I do overlook some of them please jog me on them, because I would like to deal fully with all the points that have been raised.

I take it that the first question that I should deal with is one pertaining to the scope of those provisions on page 3 of the bill, which are to be found in clauses 3(1)(j), (k) and perhaps (l), and then pass on from that to questions of the basis of valuation and then from that, Mr. Chairman, to some of the more specific points to which you referred and to which Senator Leonard has made more extended reference.

We start with the principle, I take it, that the tax created by this act should apply to all property passing on the death of the deceased. Now, in many cases it is not property that passes directly from the deceased, it is property the passing of which finds its occasion on the death of the deceased.

The Dominion Succession Duty Act—and I realize that there have been statements, Mr. Chairman, that because provisions have been contained in the Succession Duty Act for the past 17 years that is, of itself, no reason why they should be carried forward or regarded as sacrosanct. Nevertheless the principle has been well established all these years that annuities pensions in general are to be treated as part of the succession and to be subject accordingly to the provisions of the Succession Duty Act. One need refer only to section 3(1)(g) of the present act.

Now, we have accepted that principle in writing the definitions that are contained in section 3, page 3, of this bill. We have dealt with a particular case or two in the application of that principle, that may extend beyond its application in the Succession Duty Act. I don't think it can be said to be an extension of principle—the principle is well established—but an extension of the application of the principle. We have included in the definition of "property" the kind of payment we are speaking of here, annuity or pension payments, the periodic benefits, those which were not in the lifetime of the deceased the subject of a legal obligation, the payment of which arises following the death of the deceased and are occasioned by his death. We considered that to be a fair and reasonable extension of the application of the principle.

There is as well in paragraph (1) the provision which you mentioned, Mr. Chairman, by which there is included in the succession a payment which is admittedly voluntary in its nature, made for the benefit of—let us take the case of the widow of the deceased, by the employer of the deceased. That type of payment, as all honourable members of this committee know, is recognized in the Income Tax Act, in a provision which exempts payment, not exceeding three months' salary of the deceased.

We have included those in the scope of the definition of "property", the estate passing subject to estate tax, because if you do not do so, you are leaving the door wide open to cases where it would be the simplest thing in the world for employers and employees to have an understanding. Let us take the case of a senior officer of a corporation: he has an understanding, and he knows he can depend on those who succeed him in the management of the company to make provision for his widow by the payment of periodic benefits. No contract is set up that is legally enforceable, and there is nothing upon which the deceased or his widow could have sued in his lifetime; there is nothing on which the widow can sue following the death of the deceased. But, as I say, if you do not have that provision, such a case could be multiplied many times over, based upon attempts to avoid the incidence of estate tax by having quite informal understandings instead of legally enforceable contractual undertakings.

One further observation on the matter of annuities and pensions. If you do not have provisions such as we have included in this bill, it seemed to us, Mr. Chairman, you would be creating a discrimination in favour of a particular type of property, which did not seem justifiable. Why should you have some special rule applicable to the periodic type of payments as a benefit passing or arising out of the death of the deceased?

Now, may I pass on to speak about the basis of valuation?

There is, I take it, no difficulty at all under the estate tax where the periodic payment is created under the will and represents simply the division, by the terms of the will, of an asset as between the life tenant on one hand and the remainderman on the other. One of the great advantages of the estate tax is that you do not have to determine the respective values of these two interests; you simply take the value of the asset; you are not concerned about the individual successions. There is no problem or difficulty there. This type of tax has the beauty of simplicity on its side there.

But let us take the case of the annuity that is not carved out of the assets of the deceased by division between life interest and remainder. What is to be the proper basis of valuation? Well, this established basis of valuation, as all honourable members of the committee so well know, is that you look at every asset, the asset existing at the date of death, an asset to be included within the scope of the estate for tax purposes. What is that asset? It is a capital asset. That is fundamental, it seems to me, in our approach to this question. There is at the date of death a capital asset, and that capital asset consists of the right to receive for life—because we are talking about the life interest here—stipulated annual payments, or payments that can be expressed in terms of an annual payment. Now, that capital asset is capable of determination; its value can be determined at the date of death, according to well-established principles, and these principles are not confined to situations of this kind, they are used in scores and scores of situations in everyday business experience. You simply calculate according to well-establisheed actuarial formulas the present value of these future payments, and the length of the period over which these future payments are to run is the expectancy of life—worked out, again, according to well-established tables.

Of course there are very few lives that will work out precisely according to the table, but long experience has proven these tables to be sound as applied to the generality of people in a particular country; and the tables that are in use are tables that have been kept up to date in the light of medical experience, based upon sound statistical procedures, in the light of the fact that life expectancy has risen. These facts are all taken into account; and there is nothing extraordinary about this, it is a well established procedure.

Let us face frankly the two situations: the one where the annuitant does not live out the full span of life according to the tables, and the one where the annuitant lives longer than that span. It is quite clear that if the tables are sound—and they are based upon experience—that as far as the revenues of the Crown are concerned these situations will all average out, so that in the aggregate the Crown is taking its tax based upon a fair method of determining that span of life and the payments that run with it. Is this fair to the individual? That is the next question and I want to face that situation frankly, for I would be less than frank with honourable members of this committee if I did not say we examined this subject with great care and at great length in drafting the provisions of this bill.

Take the case of the annuitant who lives longer than the life span. In that case the Crown goes a bit short. It has determined the tax on the present value of this asset and has not taken into account the period that the annuitant has survived the span contemplated by the tables. I suppose nobody is going to say, "Well, in that case the Crown should come along and re-assess." But, with great respect, Mr. Chairman, there would be just as much equity in providing legislation whereby in a case like that the Crown should re-assess as in the converse case that I will present to you now.

Let us take the case where the annuitant does not live out the life span according to the tables. Let us take an extreme case where the annuitant lives for two years when the tables would give her a life expectancy of 25 years. That is an extreme example. What are you going to do in that case? You have charged the estate—let me observe that—the estate, with a tax based upon the assumption that these annual payments were going on for 25 years but they went on for only 2 years. Are you going to re-open the assessment and say that the Crown here has assessed too much and you are going to re-open it?

What is the situation? In the first place under this act the tax has been levied upon and paid by the estate. Presumably it has not been paid by the

annuitant. Someone might be able to think up a particular case where the annuitant has paid the tax. But what happens on the death? You cannot re-open that assessment and give back to the deceased annuitant the portion of the assessment that in the light of actual later events proves to have been an over-assessment based on the assumption that death was going to occur later than it did. You cannot give that benefit back to the deceased annuitant. What are you going to do? In that case are you going to re-open the assessment and turn a refund back to the estate, back to the executor to distribute? I suppose that could be done if you are going to do it in the simple case I have put where the death of the annuitant occurred two years after the death of the deceased. But that was a simple case. Let us take a case where this occurs 20 years after the death of the testator. Suppose the life expectancy in the case of the young widow was 30 years and she lives only 20. Is it going to be said you should reopen the estate and re-assess it after 20 years?

Mr. Chairman, I think it is going to mean that the Department of National Revenue will be kept pretty busy with a lot of assessments in cases where periodical payments are provided, terminable on death or similar events, if that type of situation were permtited to be made the occasion of a revision of this proposed legislation.

The CHAIRMAN: I should point out that this particular aspect is not involved in the suggestions of the committee.

Hon. Mr. FLEMING: I beg your pardon?

Senator LEONARD: I don't think we made ourselves clear.

The CHAIRMAN: No. We accept the method of evaluation. We are not asking for the re-opening of assessments. All we say is that having made the capitalized valuation in the case of pensions that also attract income tax in the annual payment of them there should be a calculation of the income tax element, and a proper calculation made of the total capitalized value before you tax. So we are not going down the line and making impediments in the way of administration.

Senator BRUNT: You might give us the formula for dealing with the voluntary payment.

Hon. Mr. FLEMING: Well, the voluntary payment is included under clause (1) at page 3.

Mr. Chairman, you have raised the question as to why the bill does not provide for deduction in determining value of that capital asset, the periodic payment, why provision should not be made to deduct the income tax that may in future be payable in respect of it. That view, I take it, proceeds upon the view that, in words I think both you and Senator Leonard used, there is some double tax here.

The CHAIRMAN: I did not say that.

Hon. Mr. FLEMING: I would like respectfully to submit to the committee, Mr. Chairman, that there is no double tax.

The CHAIRMAN: I spoke of capitalizing tax—income tax.

Hon. Mr. FLEMING: I think perhaps the point of view is not unlike that which I think was inherent in the comments of Senator Leonard. What is double tax? Double tax surely means the same tax, the same type of tax, levied twice. It does not mean that the same transaction may not be subject to two different types of tax. I have some money in my pocket—not very much. Before it got there, or if not yet, then I am going before very long to have to pay income tax on it, and the storekeeper from whom I buy goods is going to be including in the price of the goods some sales tax; he may be including also some excise tax in addition to sales tax. These transactions all involve various

taxes, and the fact that the same particular payment may be subject at the same time to estate tax and to income tax does not for one mintue, in my respectful submission, justify any contention that there is double taxation there.

Now, in the case that has been put by you, Mr. Chairman, you say the deceased has acquired in his lifetime by reason of payments—and I take it we are not going to deal with the case where he has received income tax benefits in his lifetime for payments that he has made by way of pension, when he buys a pension?

The CHAIRMAN: No, we are dealing with the case of any pension which after the death of the deceased is payable by reason of his death and the proceeds of which are taxable under the Income Tax Act.

Hon. Mr. FLEMING: Because, you see, many of these pensions are of the nature of pensions which have been or to which an individual has acquired a right by reason of payments that he has made during his working years and has had the right to deduct those payments from his income tax. We are dealing now simply with this periodic payment arising out of it.

Senator LEONARD: Mr. Chairman, may I interrupt for a moment just for the sake of clarification? There are the two types of pensions you mentioned. There is the one a man has acquired out of payments upon which income tax has been paid in his lifetime. We raise no question as to that type of pension whatsoever. The usual type of pension is the one we are concerned with, the one acquired by an employee of a company and for which he has been allowed an income tax deferment during his lifetime, and that impresses me as being merely a deferment of the liability, and quite properly when the annuity is payable after his death it attracts the full amount of income tax. The deferred income tax is then caught up and paid after his death. The two annuities are quite different. One is an annuity clear of income tax except as to the income content arising out of his death. The other is a pension which attracts full income tax on the full amount of the pension. Those two have entirely different sets of values. We suggest the deferred income tax which has been allowed in his lifetime and which quite properly is made payable after his death is, nevertheless, an item at death, a liability against the value of the pension benefit that arises upon his death, and suggest that some allowance might be made in valuing that pension.

Hon. Mr. FLEMING: Thank you for that clarification, sir. In this case that has been put, there is no argument at all, of course, for not applying the income tax. The question is simply whether you should make some abatement of the estate tax, because, you know, periodic payments may attract an income tax in the future. I submit, Mr. Chairman, that if you are going to permit the deduction of income tax—a putative calculation, because no one knows precisely in advance what it is going to be, for the thing is provisional, it is hypothetical, I don't know, in the first place, how you are going to calculate it.

The CHAIRMAN: Except this, that you have a mortality table on which you calculate life expectancy. Now, if you do that, I suppose you can apply the same principle to this?

Hon. Mr. FLEMING: You can take the same life expectancies, but you cannot take the same assumed tax rates at death, and that is, if I may respectfully say so, an insuperable task, to calculate such benefit. The calculation would be both putative and hypothetical, but I do not stop there. Parliament may change the rates, change the basis of it all overnight. It is the question of discrimination. Now, how can you justify singling out that particular type of asset and say that in calculating the value of it you are going to apply a rule that you don't apply to any other type of asset? You are going to deduct from the calculated present value of those future payments some figure that

you assume to be the income tax leviable year after year on those future payments. Now, let us take the case of the proceeds of an insurance policy. An insurance policy in capital form will bear its share of estate tax and whatever may be the yield in future years from the proceeds of that policy will be subject to income tax, and nobody proposes that the capital value of that policy should be reduced for estate tax purposes by the assumed income tax to be imposed, I assume, on the earning power of the proceeds of that policy in years to come. Now if this what I call discrimination were sound it is going to be good for the annuity business, but with great respect it seems to me that would be an intolerable discrimination to a particular type of property. I submit therefore that there is no basis for this.

The CHAIRMAN: Mr. Minister, we have a feeling that the discrimination is against the pensioner who is receiving that annual payment in imposing this extra burden and lessening the quantity of the pension payment that would be otherwise received.

Senator LEONARD: The analogy of your case, sir, is only that a pension which now exists as to which there is only income tax on the future interest. That stands on exactly the same footing as an insurance policy and there is no discrimination, and we all agree with that. But we do think that where a man had not paid income tax in his lifetime and owed it at his death it would be allowed as a liability. The mere fact that it is going to paid over a number of years in the future because it was not paid in his lifetime does not alter the fact that it is a liability and a detraction from the value of that particular asset. A discrimination now exists because that one pension that is subject to a tax on the full amount of the pension is valued at exactly the same amount as the other pension which is subject only to an income tax on the future interest earnings of that particular pension.

Hon. Mr. FLEMING: With great respect, Mr. Chairman, I do submit that the way this bill is drawn it prevents a discrimination that would arise if you apply what is proposed now. It would give a benefit to the annuitant in the calculation of the value of that periodical future payment. You are going to create a discrimination in favour of a particular type of property, and I submit that is not defensible, and I come back and comment on the amendment that Senator Leonard suggests in this respect, to the fact that there is no way of calculating such an allowance. That was I think to some extent recognized in the suggestion that the senator made in his draft amendment to section 26, but I did note that the difficulty in this respect was plainly recognized by the amendment in providing for a deduction as the Minister might prescribe. Now with great respect, Mr. Chairman, I would recoil from any proposal of that kind. No Minister should be put in the position of determining tax.

Senator LEONARD: This is a matter of regulation and if I might just deal with that one moment. On two occasions, one is in connection with the self-employed retirement fund, a similar situation has arisen and an arbitrary rule of 15 per cent has been established. I am not suggesting that 15 per cent should be the case here but at any rate when the difficulty was recognized there was a method found. The other one was of course under section 105A where we go to the distribution of accumulated profits. An arbitrary method had to be found and the 15 per cent formula was found there again on the point in question now. Under this act the taxation of Canadian assets of non-residents a formula of 15 per cent has been found.

So that I suggest there is some virtue in our recognizing the principle, if the discrimination exists, and we think it does, and find a reasonable formula for dealing with it.

Hon. Mr. FLEMING: With great respect, Mr. Chairman, I do not think those are dependable analogies. A tax on refund of premiums or a flat tax on the property of persons domiciled abroad is very different from creating a flat tax on the assumed future income tax, year by year, over a period of years in place of a tax that the act is going to create.

Now, you are asking Parliament or asking the Minister according to the form of that amendment to substitute some tax by regulation for what may be a tax that may be changed 30 times in the lifetime of the periodical payment.

The CHAIRMAN: We are not asking for the substitution of any tax, we are only asking that a formula be arrived at. The only tax that is warranted by the annual payment is imposed on the person who receives the money. That is not imposing a tax at all.

Senator LEONARD: It is a formula for valuation.

Senator CONNOLLY (*Ottawa West*): Could I say it this way: when it comes to the question of valuation for duty purposes what we feel, as Senator Leonard and the Chairman said, is that the income tax liability, the content of income tax in the valuation which normally would be made should be recognized, but once the pension payments are being made they will be subject then to the regular income tax year by year. We are not asking that that tax be modified in any way. In other words, if the pension, say, is $2,500 a year or $3,000 a year, the recipient of the pension will pay tax on the amount of income that that person gets in the future.

Hon. Mr. FLEMING: I follow that entirely, Mr. Chairman, but I do point out that what is proposed is the calculation of a reduction in the estate tax, the basis of which is a putative calculation of income tax liability year by year and that, with great respect, is something that should not be made the responsibility of a Minister. Parliament will have to say what should be done in that case, and with great respect I say that that is not a case analogous to those put by Senator Leonard where a flat tax imposed in advance is the best tax in those circumstances. This is a case of trying to establish some nice round figure and take that as a substitute for the varying rates of tax that may be applicable and basing a present calculation on that as to the date of death applied in determining the capital value of the future periodic payments.

Senator CROLL: Mr. Minister, you put great emphasis on discrimination and make a point of it. Can you think, in the case of an estate, of any other asset that has a built-in liability as has this pension? Talking about discrimination, who is being discriminated against that you cannot discriminate. What I say is that this has a built-in liability and you are now discriminating against these people as against the others. That is my suggestion.

Hon. Mr. FLEMING: We did work out a couple of examples and we could relate them to the committee, Mr. Chairman, if that is satisfactory.

The CHAIRMAN: Yes, that is satisfactory.

Hon. Mr. FLEMING: Mr. Smith worked out today a couple of examples which perhaps would be of interest to the committee to illustrate this point. Mr. Smith will describe them.

Mr. E. H. SMITH (*Department of Finance*): Mr. Chairman, it is difficult to put in a short compass all I have in this table. Perhaps I could say that I thought it might be useful if one could find in the files of the Department of National Revenue an actual case of what happened and what was the effect of Estate tax plus income tax on a pension. These examples I have were just selected at random.

The first one I have was the case of an estate of about $98,000. I do not want to give you all the assets, but there was a pension given to a widow, age 42, of about $1,900 a year, the capital value of which was established at

$32,000. That is quite a large pension in relation to the total size of the estate. Then there were three dependent children and they got pensions of various amounts. I assumed that after the succession duty had been paid the widow was left with certain assets from which she would get her income: bonds of about $30,000, stocks $1,000, cash $1,000, real estate and personal effects $18,000 on which there was no income. Her total income—and I must say the income from the pension to the children is not her income, but is separate—came to $3,200 a year.

Senator BOUFFARD: Including the pension?

Mr. SMITH: Including the pension.

As a widow with three dependent children she can claim married status on account of one child and $250 in respect of the other two, and she would probably claim the standard deduction of $100. This would give her a deduction of $2,600, and a taxable income of $600. The tax on this would be aproximately $80. She would get a small dividend tax credit because she had stocks of $1,000; I assumed she would get $50 from that source, on which she would have a small dividend tax credit of $10, leaving a total tax of about $70.

So, her pension is being taxed in this case at a little over 2 per cent for income tax. Her succession duty on the whole estate was about $7,500, which is 8 per cent of the value of the estate. So, you will see that the pension is being taxed at 8 per cent for succession duty, 2 per cent for income tax.

I then figured out what the estate tax would be on $98,000 for a widow with three dependent children. In this case $90,000 is exempt, the taxable value is $8,000, the tax is $860, and the effective rate is a little less than 1 per cent. Under the estate tax her tax in respect of pension is 1 per cent, and her income tax would be a little higher, since having paid less under the estate tax she has more income. I would make her effective tax rate 2.5 per cent. Therefore, the effective tax rate on the pension for income tax is 2.5 per cent, for estate tax just under 1 per cent, or a total of 3.5 per cent.

Senator HAIG: How much money do those two items represent?

Mr. SMITH: I don't know whether you should compare the two; one is on capital and the other is annual income.

Senator BRUNT: A small amount.

Senator CROLL: Less than $1,000 altogether?

Mr. SMITH: An estate tax of $860 and an annual income tax of about $70.

Senator CROLL: Less than $1,000 altogether?

Mr. SMITH: Yes. If the committee is interested in another example of a bigger estate of about $400,000 I have the figures on such an estate.

Senator BRUNT: Just give us the percentages; don't go through all the details.

Mr. SMITH: This is an estate of about $425,000—and the department changed some of these figures so that the estate might not be identified—there was a pension of $5,000 a year for a widow aged 46. This made a value of $80,000 for the pension, quite a large one, out of an estate of $425,000. By the time she had paid the duties, and her daughter paid some duties, she was left with $325,000, of which if I remember correctly, $100,000 was in stocks and a similar amount in bonds. The income from all these things, including the $5,000 pension, was $14,500. As a single person she could deduct $1,000—I omitted the standard deduction in this case. The dividend tax credit—which in this case is important—on the $5,000 income from her stocks, results in a credit of $1,030, and a net tax of $2,354. Taking that as a percentage of her income,

it is an effective rate of 16.2 per cent. The effective succession duty rate was 25 per cent. Adding them together you get about 41 per cent, which is quite a bit higher, but on a larger estate.

I then calculated the estate tax on this same estate, and it was considerably lower. It came to an effective rate of around 20 per cent. The amount was $110,000 for succession duties, $85,000 for estate tax. The difference in the two was mainly by reason of the widow's larger exemption, but another factor was the joint property. Some of that of course is not taxed under the new act, whereas it was under the old one. So, she would have paid considerably less succession duty than estate tax.

To summarize, the effective rate on this pension in this estate originally valued at $425,000 was about 20 per cent estate tax, and 16 per cent income tax.

Hon. Mr. FLEMING: Mr. Chairman, just one or two observations to complete the picture, if I may.

I should like to remind you, Mr. Chairman and honourable members of the committee, that the right or opportunity to defer income tax is a very considerable benefit under the law; and having extended that benefit in the lifetime, surely it is not going to be said that there is any onerous burden laid on that situation, in the light of what we are proposing here.

The second point, I was asked, if there were any other cases. I think Senator Croll asked if there were any other cases where a tax levy did not take account of a built-in tax liability. If I may, I will ask Dr. Eaton to give one example from his expenrience, and Mr. DeWolf another.

The final matter you asked me about, Mr. Chairman, had to do with the payment of tax in annual instalments under section 15 of the bill. The bill permits the payment in six annual instalments; and, assuming I could follow the suggestion, it was that there be a right to extend the period of payment so that there would be no obligation to pay in any one year more than 15 per cent of the estate.

The CHAIRMAN: No.

Hon. Mr. FLEMING: Is it 15 per cent of the benefit?

The CHAIRMAN: Of the benefit.

Hon. Mr. FLEMING: I think there will be a very great difficulty presented in trying to apply a limitation of that kind. It would mean a great deal of calculation on the part of the officials, and, I should thing would mean carrying some estates on for a very long period. Now this is one of the provisions that was carefully examined—they all were carefully examined, but this one was very carefully weighed—to try to arrive at what might have been regarded as an equitable period over which to give the opportunity to distribute the discharge of the tax liability.

The CHAIRMAN: Mr. Minister, I was wondering if I could call your attention to this. I would say a substantial portion of these pensions would be paid by insurance companies or by employees or trustees of funds; and as to employers and life insurance companies and others who would be paying them, are already making payments of an income tax nature from which they make income tax deductions monthly and remit; therefor, as to the certainty of getting your money, I don't see much problem in that, or as to complication of bookkeeping, I do not see much of a problem there.

Mr. FLEMING: Would you permit a word from those who are dealing with these matters, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. FLEMING: I do not want to be rigid or dogmatic about a period like this. We did write in a provision for a period, over a six year period; we thought it was reasonable under the circumstances. If there is something

specific, we would be glad to give consideration to it. But I must say that the difficulties of any such formula as has been proposed will, I think be very considerable. Perhaps those who are dealing with these matters can best describe them. Would you hear Dr. Eaton and Mr. De Wolf dealing with concrete cases, in reply to Senator Croll; and then, perhaps, one of the other officials could deal with this point you have raised just now.

Dr. EATON: As to this other kind of payment, I made the mistake myself in the other place before the committee, by assuming that this is the only kind of payment that is treated in this way, and it was pointed out that there are, in the case of life insurance agents, deferred commissions which can be coming in after the death of the deceased, which come to his estate. These are fully taxable as income, and the estimated amount over the period is capitalized.

Mr. DE WOLF: The example which I have in mind is this: We had a peculiar situation, which arose in this way. An estate was entitled to an annuity of $10,000 per year. The annuity arose in this way, that the deceased person owned a building; the building was leased to a company at a rental of some $30,000 per year; $10,000 of that was payable to the deceased's estate for a period which would expire on the death of the survivor of a group of persons, which included the deceased, but would have about 45 years to run after the death of the deceased. When this income was received by the deceased's estate from the estate of her father it would be disbursed to the various beneficiaries. There would be no allowance for income tax, although income tax would have to be paid in respect of this annuity which the deceased's estate would receive and which would pass to her beneficiaries.

Senator CROLL: I merely point out that these examples are not normal examples. Mr. De Wolf's was unusual, and Dr. Eaton's applies to a very small minority of our people who have incomes of that size. The proportions are probably 100 to 1, so the discrimination, I point out, works the other way.

The CHAIRMAN: If we have exhausted this particular subject of pensions, could we move on to the next.

Hon. Mr. FLEMING: Perhaps you would hear Mr. Linton on that last point, about the annual payments.

The CHAIRMAN: Yes.

Mr. LINTON: Mr. Chairman, as I understand the proposal, it does not adopt the suggestion that was made in some of the representations, that this payment would be deducted at source; or does it intend that?

The CHAIRMAN: I think so.

Senator LEONARD: It intends it,—just to carry your six year provision further—in cases of hardship, and not to make the payment payable to the department by the insurance company—

The CHAIRMAN: Yes.

Mr. LINTON: Either way is contemplated.

Senator LEONARD: Either way would be contemplated.

Mr. LINTON: If you had the employer deduct it you would have the difficulty of him knowing what to deduct. I take it that what would be deductible would be variable in each case, depending on the relationship between the amount to be paid normally from an instalment, and the amount of the instalment.

Senator LEONARD: You would instruct him.

Mr. LINTON: We would have to instruct him in each case what this was. The idea would be, I take it, if we had a $1,000 payment, and the instalmnts, by the six year period now provided, come to say $200, that would be over the 15% and the $50 would have to spread further than the six years. How much further?

Senator LEONARD: Fifteen per cent is something just suggested, but I suggest to you that there must be some point at which hardship starts. If you thought 20% was all right, that would be in your own hands. But at some figure you would say, "we are collecting $200 out of this annuity", and you would carry it on as long as it was necessary.

Mr. LINTON: Is the suggestion that we would carry on for six years, and the balance for some longer period?

Senator LEONARD: Until you were paid.

Mr. LINTON: At discretion, I suppose?

Senator LEONARD: Yes.

Mr. LINTON: There is going to be a good deal of recalculating, as well as disagreement with the estate, as to how long it should be. They would like it to be infinitely long, and we would be interested in keeping it reasonably short. I think it would be a matter on which there would be major dissent. And then we would have to establish contact with the payor for deduction at source, and machinery would have to be set up to keep track of that. The Chairman has suggested that these payors are insurance companies and so on. There would be no difficulty in collecting from them. But a great many of these people will not be such payors, but small employers and small pension funds, in regard to which a great deal of pursuit may be necessary.

Senator LEONARD: I don't think it will be necessary to debate the details, but it would seem to me that if you can do it for six in that settlement you could do it for seven or eight or ten.

Mr. LINTON: We are not proposing in the section to have it paid at the source.

Senator LEONARD: You have in section 16 a provision that if there is undue hardship the minister may defer payment; and we have had these cases presented to us, where the amount taken, even after the six year period, amounts in some cases to 100%, in some cases to 50%. Perhaps you would be able to establish a figure where you would say, "Beyond that there is hardship, and we will not go, and that will be the determining factor, and in that case there will be seven or eight years", as the case may be. That is the whole tenor of the suggestion. If there is any flexibility that you can introduce, rather than a rigidity of six years, which is very good in so far as it goes, we would like to see it.

Mr. LINTON: Might I just say a word on the hardship? This is not to deny that the case could happen as you suggest, but most of these pensions are payable to people who inherit other property too and generally the pension is not absorbed for the six years while the tax is gathered, though it could happen. I just think I should say it is a rather infrequent thing.

Senator LEONARD: There seems to have been so many cases presented to us that perhaps when they have happened they have stood out.

Mr. LINTON: I think that may be it.

The CHAIRMAN: What is the next heading the committee would like to hear the Minister on?

Senator BOUFFARD: I think, Mr. Chairman, there was a good deal of accord in so far as clarification of community of property, and perhaps we could deal with that.

The CHAIRMAN: Yes. Mr. Minister, with respect to the "competent to dispose" question which occurs in section 3 (2) (a) on page 5 of the bill, many points were raised under that section and under a further section of the bill to the effect that unless there was clarification this might run afoul of the community of property concept.

Your representatives here, including Mr. Thorson and Mr. Linton, were very clear and firm that not only was there no intention but, as a matter of fact, to the present moment the Succession Duty Act has not been extended to gather in that particular property aspect.

Senator Monette and Senator Bouffard, who are quite familiar with the community of property law, feel that the law is not as clear as Mr. Thorson and Mr. Linton would have us understand and that if everybody agrees it is not the intent to include community of property, then there should be a clarification in the bill, and that the proper place to insert it would be in the exclusion section, section 4 of the bill. I think you have seen the wording on that, Mr. Minister.

Hon. Mr. FLEMING: Mr. Chairman, I can assure you and all members of this committee that I fully confirm and adopt what was said to you by the officials concerning the intent of the legislation in this respect. It had not occurred to any of us that there was any room for doubt or question in the terms of this bill, but I assure the committee I have no objection if it will contribute to an abundance of clarity in the bill—

The CHAIRMAN: And peace of mind.

Hon. Mr. FLEMING: —to have a suitable provision added here. It will simply be declaratory and confirmatory of what we think was the clear intention, and certainly our understanding of the effect of this provision. There was a question as to where would be the most suitable place to insert it. You mentioned the possibility of inserting it in the exclusions. Mr. Thorson, the very competent draftsman of this bill, thinks that the more appropriate place to insert such a provision would be on page 5, in section 3(2), on the general subject of property of which the deceased is competent to dispose.

Senator BOUFFARD: I would not mind that at all. I would be agreeable to that.

Hon. Mr. FLEMING: I believe the draft prepared by Senator Monette contemplated an amendment to section 4 of the bill. The draftsman of the bill, and with respect, I share the view he has expressed, feels that the better place to insert such a provision—

Senator HAIG: He told me "any place at all."

Hon. Mr. FLEMING: —is in the definition of a property in which the deceased is competent to dispose, and that is in section 3(2) on page 5 of the bill.

Senator BOUFFARD: We don't mind where you put it as long as it becomes clear.

The CHAIRMAN: Mr. Minister, I think the committee would like to hear you on the question of creating a lien under this bill, and that is done under section 43. We suggest you should read section 43 together with section 47 which is the "consent to transfer" section. We feel that the consent should operate as a discharge, and that there should be some provision for securing a discharge because certainly an intended purchaser would want to be satisfied.

Hon. Mr. FLEMING: We have considered that point and have a suggestion to make. The point is a real one having regard to the problem of establishing clear title in land transfers. This question was raised in the other place.

The difficulty is that while Parliament can create a lien, there are difficulties of registration. One cannot compel registrars of liens, or masters of titles, depending on the system of land tenure and registration, as can the provinces, which have a succession duty of their own, to accept for registration certain forms of release. But we have a suggestion to put forward on that. Mr. Thorson will put it forward if it meets your pleasure, Mr. Chairman.

The CHAIRMAN: Yes, Mr. Thorson.

Mr. THORSON: It seems to me that some sort of provision could be drafted to provide that the Minister may, under circumstances where a consent to transfer would be granted, provide for the registration of the discharge of the lien in some form which would be prescribed pursuant to the regulations.

The CHAIRMAN: That seems satisfactory, doesn't it?

Senator BOUFFARD: Mr. Thorson, and Mr. Minister, I think there was something else in the discussion of this matter in so far as Quebec is concerned. A lien is what we call a privilege and it exists at the minute the law creates the lien and then it comes before any mortagage. I do not think it is the view of the department that once a man dies and there is a lien that you are going to take over his property, that the lien is going to come before the mortgage that was established at that time. I think Mr. Thorson knows very well that in bankruptcy and where you have created liens you have also indicated the rank that the lien would bear upon the property. There was the case of *Larue* that went to the Privy Council where it was decided the federal Government had a right to create a lien. But if you do not indicate where the lien is going to rank, then it is going to come before the mortgage, and any mortgage that has been established on the land at that time will come after the amount of the lien unless you say in the law which creates the lien that it is not going to come before the mortgage in existence at that time. I think this is extremely important, otherwise you are not going to have anybody who will loan money on any mortgage if a lien to the amount that may come with the succession duty tax can be established and passed before the mortgage.

Hon. Mr. FLEMING: Mr. Chairman, it is quite clear in the terms of section 43 that the lien attaches only to the estate or the interest of the deceased in the land in question, whatever that interest may be. If he is the owner of the land free of encumbrance, then of course the lien in that case will attach to that property as the first charge on it. On the other hand, if there are prior charges on the property validly created by the deceased and in effect at the date of his death the lien created by section 43 will attach only to the interest of the deceased in that property at the date of his death.

Senator BOUFFARD: I am afraid that so far as Quebec is concerned it is not the law as I understand it. The lien comes before any mortgage. The Civil Code says that privileges, which is a lien, comes before a mortgage, and especially a privilege of a lien to the Crown comes before a mortgage. I am sure the department does not want the mortgagor to suffer on account of the fact that his lien would be created at a time when he already had his mortgage registered.

Senator HAIG: I suggest that the solicitor for the department consult with the Department of Justice on this question to be sure that the law is right, and then go ahead.

Hon. Mr. FLEMING: The extent of the law is quite clear; and in the case the senator has put if the mortgage was a valid charge upon the property at the date of death there would certainly be no attempt to so override that mortgage to create a lien on more than the deceased possessed. The interest, the estate of the deceased in the property at the moment of death was an equity of redemption, subject to the mortgage, in other words. Now, there is no thought

here of applying the lien to anything more than the interest or estate of the deceased in the property. We will be glad to have a look at the point that has been raised by the senator, because certainly the intent of the legislation, and of the person who introduced it, is quite clear in that respect.

Senator MACDONALD: I hope the release would be wide enough to include the interest of the mortgagee in the property because a mortgagee has an estate or interest, and so there would have to be a provision whereby the mortgage could be assigned.

The CHAIRMAN: Are you speaking about Ontario or Quebec?

Senator MACDONALD: I am speaking about Ontario.

The CHAIRMAN: Under Ontario law if there is a mortgage that is registered against property, that mortgage is registered prior to the time this lien comes into existence.

Senator MACDONALD: I am talking about the lien. The department would have a lien against that property because it is property in which the deceased had an interest, it is land in which the deceased has an interest.

Hon. Mr. FLEMING: In the case you are putting, was the deceased the mortgagee, or the mortgagor?

Senator MACDONALD: The mortgagee.

Hon. Mr. FLEMING: The mortgagee. Well, the lien of the tax is only the interest of the deceased in the property, and in that case if the deceased were a mortgagee then obviously there is a lien attached to his interest in the property in the mortgage.

Senator THORVALDSON: Speaking of the West, and anywhere else I know of, I know of no authority for the federal Government being allowed to file a lien in any registry office which would be given priority over a registered mortgage.

The CHAIRMAN: We were not suggesting it in relation to the western provinces.

Hon. Mr. FLEMING: I take it that the question that has been raised applies only under Quebec Law.

Senator BOUFFARD: That is right.

Hon. Mr. FLEMING: In the common law provinces there is no question of a lien attached.

Senator BOUFFARD: I do not think it is the intent of the department to put lien before mortgage.

Hon. Mr. FLEMING: We would be glad to look at that in relation to Quebec.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, in working out this principle, perhaps Mr. Thorson might consider a practical approach to it. As everyone knows, every specific asset that is reported in an estate must be released before it can be administered by the executor. Now, in the case of an asset such as a piece of land, a piece of real estate, if the release contained a discharge or a release from the lien created by the section, that might in a practical way clear out the claim for lien we have been discussing, and I think probably a document of that kind put upon the title would obviate any problem that might arise. I suggest that as a practical way.

The CHAIRMAN: The next item, while we are moving on to these things that seem to be unanimous, is the question of discharge of the trustee. The suggestion has been made, I think by Senator Leonard, who put it in tangible form, that there would be a certificate of discharge granted at the end of four

years, and subject to all the provisions which preserve the right of the Crown in relation to after-discovered assets in the event the trustee had not carried out his duty fully.

Hon. Mr. FLEMING: Well, the statute here creates a legal discharge at the end of four years. It is complete and absolute except in the case where there has been some fraud or some non-disclosure. Now, I am sure Senator Leonard has in mind the type of discharge that has been available to executors under the Dominion Succession Duty Act. That is not an absolute discharge, it is still open to qualification in the event of fraud or non-disclosure, and there is nothing absolute about that. The statute creates an absolute discharge at the end of four years anyway, subject to the same exceptions, and there is no final or peculiar value to the issuance of that type of discharge under the old act.

Senator ASELTINE: Would that mean, Mr. Fleming, that no executor could be discharged—could wind up an estate prior to a period of four years?

Hon. Mr. FLEMING: No, he can go ahead and wind it up. If he has paid his tax on the estate then the act will discharge him. We are talking about the issuance of a certificate. The act does not provide for issuance of a certificate in the way that has been practised hitherto under the Succession Duty Act, but it does give him an absolute discharge where he pays the tax, and an absolute discharge at the end of four years.

The CHAIRMAN: Where is the absolute discharge if he pays the tax?

Hon. Mr. FLEMING: That is his liability. There is no liability imposed on the executor in excess of the estate tax levied.

Senator MACDONALD: Where is the four years?

The CHAIRMAN: That is just a limitation in the absence of fraud or misrepresentation.

Senator LEONARD: Mr. Chairman, if I might put the proposition: it seems to me that it would be quite reasonable to have in the bill a provision to this effect that where there is no tax payable or where the tax has been paid to the satisfaction of the Minister, and where the Minister is satisfied that the executor has execised all due diligence and taken all reasonable precautions to insure that the amount payable by the executor was paid in full the Minister shall, at the request of the executor, give a certificate of discharge to that effect following the words of the present section, and then go on and say the Minister shall not be bound to grant such certificate during the period of four years if he does not desire to do so, and a further subsection to state that it will have no effect in the case of fraud or failure to disclose material facts. Presumably there are a good many cases where all these things would be quite satisfactory to the Minister within the period of four years in the case of simple estates where there is no difficulty whatsoever and it might be just as well for both the executor, who probably wants to clear it up in his lifetime before he dies to get a certificate of discharge and to know he can sleep easily at night, and there seems to be no reason that something like that could not be put in because the Minister can still withhold it if he likes until the four year period, and it is only if the duty is fully satisfied that a discharge will issue.

Hon. Mr. FLEMING: With respect, Mr. Chairman, I suggest that there is no great merit in a discharge under these qualifications. What good does it do? It gives somebody a piece of paper that says, under those conditions and subject of course still to the conditions, that there has been complete disclosure and no fraud; it certifies that he has paid the tax levied on the estate but he is going to have his receipt for the payment of taxes in any event. It is not something that he wants to register in a registry office or produce for

some particular purpose. It has no financial value in that sense in terms of registration as a public document or a document in a public office. I point out that while there has been this provision for issuance of a certificate of discharge under the Dominion Succession Duty Act there is no such provision under the Quebec Succession Duty Law.

Senator CONNOLLY (*Ottawa West*): It is a great comfort for individual executors though, and it might be an advantage in the department where a discharge has been issued the file could be then closed subject to be opened only for fraud.

The CHAIRMAN: I think we have pretty well covered that.

Senator MACDONALD: You give a similar discharge under the Income Tax Act in connection with estates when the income tax has been paid. You give a release under that act.

Hon. Mr. FLEMING: It is a clearance.

The CHAIRMAN: Call it what you will.

Hon. Mr. MACDONALD: The executor does get it though.

Hon. Mr. CROLL: Yes, but it is not any good to him.

Senator BOUFFARD: Mr. Chairman, before closing that point I think it would be a very good thing if the Minister were allowed to give a discharge. In the province of Quebec a lien can be registered on the property and nobody is in the position to give a discharge, and the registration will remain on the property as a lien and mortgage for 30 years and there is no possibility of getting the lien out of the registry unless you are allowed to give a discharge. So it seems to me, Mr. Chairman, under those circumstances the Minister of Finance or the Deputy Minister should be authorized when he is satisfied that all taxes have been paid, should be in a position to give the discharge and liberate the property against which the lien has been registered.

The CHAIRMAN: But we are discussing the discharge of an executor.

Senator BOUFFARD: Pardon me, that is not the same thing at all.

The CHAIRMAN: We will now deal with the case where documents and records are seized and copies made. We feel that the department should furnish a copy of every document to the people from whom the documents were seized.

Hon. Mr. FLEMING: That is the provision on page 36, section 45(4). As long as you do not propose to create an obligation on the part of the department to make copies of documents, certainly in any case where the department chooses to make copies there is no objection to giving copies to the taxpayer in that case. That is the current practice anyway, I am told.

The CHAIRMAN: The next item is section 9(1), the provincial credit. The provincial credit under this bill is based on the situs of property whereas under the present act it is based on provincial taxes paid, and the effect of the provincial credit in this form would be in some cases to reduce below 50 per cent the credit in respect of provincial taxes paid. Mr. Minister, this committee would like to have some statement from you as to why this change and reduction is being made in the extent of the credit.

Hon. Mr. FLEMING: Mr. Chairman, this problem obviously cannot apply in the first place to real estate. It can apply only to other forms of property. Now here we have a situation admittedly where by reason of this rule that is here reproduced the taxpayer in one of the so-called non-renting provinces can have less than half the estate tax cut because of having, we will say, property other than real estate located in a renting province. That is the situation.

Now, Mr. Chairman the effect is that the federal treasury is making payments to those renting provinces on the basis that the property is in the renting province and is taxable there and the federal treasury is going to be the loser here if this provision that we are offering now is changed. In other words the federal treasury will under the Federal-Provincial Tax Sharing Arrangements Act have paid let us say, the province of Manitoba, on the basis of the property being subject to taxation in that province and thereby being rented to the dominion. Having paid that money out of the federal treasury to the province of Manitoba we do not have the opportunity to reduce the portion of the deceased's federal tax that would be applicable to that part of the deceased's property where he was an Ontario resident but had property in Manitoba. There is the situation: we just have to look at the revenue problem.

Senator BRUNT: Mr. Chairman, there is no doubt that this section does discriminate against persons in Ontario and Quebec. They are going to pay more taxes. Now, I am not arguing for one minute that you are not entitled to it, but before you put this section into effect, I think your department should sit down with the taxing authorities of Ontario and Quebec and work out something that is fair and equitable. No doubt either the dominion or the province is entitled to the tax. If you feel you are justly entitled to the tax, surely the province should give it up. I don't think any testator or executor can do it: this is something that must be worked out by the dominion taxing authorities and the taxing authorities in the provinces of Ontario and Quebec.

I believe this section should be deferred so that the people in the provinces of Quebec and Ontario will be taxed in exactly the same way as in other provinces. I do not want you to get the opinion that I think you are not entitled to it; however, I do not think the people of the provinces of Ontario and Quebec should pay twice, and that is what it means.

Senator BOUFFARD: Mr. Minister, apart from that, the reason the people in the province of Ontario do not get their share is because of the change in the definition of "situs". On many of these properties the change would mean that the people of Quebec and Ontario would not get the benefit of the decrease. Had the situs not been changed in the act as at present, and we had the situs according to common law and jurisprudence, that would be a different matter for the provinces of Ontario and Quebec. Why should the act change the definition of "situs" and take away the benefit of the cut?

Hon. Mr. FLEMING: Mr. Chairman, I think it is fairly clear that the problem that has arisen in the minds of honourable senators in this committee is one that would apply to persons of ample means. There are not going to be very many persons of limited means who would be affected on this score. Such persons are going to get the benefit of a very considerable increase in exemption under this measure as compared with the Dominion Succession Duty Act.

With great respect, I say the benefits can't all go one way. We have in this bill gone a very long way in creating increased exemptions, in recognizing the ownership principle in connection with property jointly held, to an extent never recognized before, and in recognizing exemptions with respect to insurance held on the life of the deceased. There are many ways in which this means easing the tax burden. And when individual situations arise where somebody, by reason of having property in more than two provinces, incurs some measure of, let us say, neutralization of the benefit he is driving under this measure, I submit, with great respect, that is no reason for taking all the advantages away from the treasury, if we are going to meet these heavy concessions that have been made in the form of increased exemptions. With great respect I say, we can't always take the course that is going to cost the Treasury money. Already in this situation it is acknowledged that the federal treasury is out of pocket considerably because, as in the case I put, of the deceased testator resident in

Ontario, who owned property without being a resident in the province of Manitoba, the federal treasury already has treated that property as being located in Manitoba, with half of the estate tax being allowed to Manitoba as a rental. The federal treasury has made a payment to Manitoba in respect of it. Then, to say that we are making a concession again in respect of non-renting province, I must make a plea for the poor, battered treasury, because by the time we get through with this bill it is going to have suffered some substantial losses.

Senator BOUFFARD: But the advantages and great exemptions you talk of apply to all Canadians, whether they live in Manitoba or British Columbia. Why should wealthy persons of Quebec and Ontario have to pay part of it? That is a discrimination that we can't accept.

Hon. Mr. FLEMING: With respect, there is also a discrimination here against the federal treasury, if it is going to lose this money twice.

Senator CROLL: There are eight provinces as against two—I don't think there is any discrimination. They can join the other.

Senator BRUNT: I am not asking you to give it up definitely, but I am suggesting that you sit down with the provinces and work out something that is fair and equitable.

Senator LEONARD: In support of Senator Brunt's suggestion, I think what started a lot of this trouble was that before tax rental agreements there was no reciprocity between Ontario, British Columbia and Manitoba. Nearly all provinces of Canada were exercising their rights of double taxation: Ontario was taxing the B.C. asset of an Ontario resident; British Columbia was taxing an Ontario asset of a B.C. resident. In those circumstances the proper thing to do under a system of taxation by domicile, as Dr. Eaton has said, is for the two jurisdictions to sit down and work out a reciprocity or a tax credit system. When the tax rental agreements came into effect the Dominion took over from British Columbia not only its taxation of the B.C. residents in Ontario, but also the B.C. assets of Ontario residents. Up until now they have recognized the position that they had taken over the full domiciliary taxation rights of these B.C. residents by, in effect, yielding the reciprocity which should have been in effect between the provinces.

Now, by the application of this new provision no doubt a double tax is going to be imposed on the residents of these two provinces, and they will be caught between the tax jurisdictions. In those circumstances, as Dr. Eaton has said, the two taxing jurisdictions sit down together and work out a reciprocity. All Senator Brunt is suggesting is that perhaps this section could be suspended until the same type of thing is done that would ordinarily be done if it was between Canada and the United States, Canada and the United Kingdom, or Ontario and Quebec—that they work out a system of reciprocity.

Senator HAIG: It can't be done.

The CHAIRMAN: What you mean, Senator Leonard, is that the section should be left in the bill, but that the particular section be not proclaimed.

Senator CROLL: It must be operative if it is left in the bill.

Senator LEONARD: You need an amendment saying that this particular type of allowance as far as the two provinces are concerned will come into effect upon proclamation?

The CHAIRMAN: If you suspend the section, or do not bring it into force, you create a worse situation.

Senator LEONARD: The present arrangement would have to stand until that time.

Hon. Mr. FLEMING: May I ask you to hear Dr. Eaton? With great respect for the long experience of Senator Leonard, I think there is a mistake in one of his references to the situation that has existed heretofore. I say that with great respect.

Dr. EATON: I went through most of these things the other day, and I don't want to repeat them now. I was not quite sure whether one point Senator Leonard stated was quite correct.

The rental payments to British Columbia, for example, are confined to—or to put it the opposite way—we do not pay renting provinces a rental in respect of property they could tax if they were in the field, in respect of property situated in another province. By that I mean the rental payments are based on the presumption that the tax on property situated, say, in Ontario which British Columbia could tax, does not make British Columbia eligible for a rental on that. I don't know whether Senator Leonard had that point clear.

Senator LEONARD: I stand corrected. All I say is, when the rental agreements came into effect, British Columbia was taxed both ways, and Ontario was taxed both ways; neither was allowing any deduction to the other province.

The CHAIRMAN: I think we have made our point there. I see the practical difficulty: What to do, short of re-enacting the provision in the present act.

Senator EULER: "Fools rush in where angels fear to tread". The discussion has been carried on pretty much by lawyers, and I am not a lawyer, but I would like to ask a clarification of something. Two provinces, Ontario and Quebec, have not got a rental agreement. I understand that if you have property in another province—I understand it cannot be real property, we will say it will be stocks or bonds—the owner, say, is taxed in the province of Ontario to the full 100% of what he owns, and also of what he owns in Quebec. What he has in Quebec is taxable under Quebec law. On that he receives an abatement of 50%. Now to the extent of 50%—assuming I am the owner—I am paying double taxation: is that right? I do not get full abatement of the tax?

Hon. Mr. FLEMING: Under those circumstances you would, if all your property was in the particular provinces, because it is based on situs; therefore you would get your 50%.

Senator EULER: I get my 50%, but I don't get 100%.

The CHAIRMAN: No. You never would get 100%.

Senator EULER: Just one moment. I want to have my point made clear. Is it more to my benefit, from the point of view of taxation, to have all my investments in the province of Ontario, rather than some in Ontario and some in Quebec? In Ontario I will pay my 100% tax. I also pay 100% tax on all the property I have, whether in Ontario or Quebec. I still pay in the province of Quebec and get only 50% abatement. Am I not paying double taxation? If that is so it would be certainly important to me, or to somebody who has money to invest, not to invest in both provinces, but to invest only in one.

Hon. Mr. FLEMING: With respect, the problem does not arise in the case of a resident of one of the non-renting provinces having property at his death located in the other non-renting province—Ontario or Quebec.

Senator EULER: Am I paying double tax if, living in Ontario, I have property in another non-renting province?

Senator MACDONALD: You pay half the tax on that particular item, half to the province of Quebec and half to the province of Ontario. That is what it comes down to.

Senator CROLL: No, that is not quite right. Let us have Linton give us his view of that.

Mr. LINTON: You have got into some bad samples rather than a bad interpretation. Quebec and Ontario have a reciprocal arrangement whereby they relieve this double taxation. They have made a reciprocal arrangement that Dr. Eaton postulates would exist if these other provinces were still in the field. The sample that, I think, perhaps would illustrate what you mean, Senator Euler, is that if you are in Ontario, and you have all your property in Manitoba—

Senator EULER: No, I am not—

Mr. LINTON: Then you are at a tax disadvantage.

Senator EULER: No; I live in Ontario, and living in Ontario, I will pay taxes on property I have also in the province of Quebec.

The CHAIRMAN: No; there is reciprocity.

Senator EULER: We will say, here is a man who has all his investments in Ontario and Quebec. He pays the tax on all the property he owns in either province, 100% as I say, he also pays on the property he has in the province of Quebec.

Mr. LINTON: Yes, but he gets credit from Ontario for the tax he pays in Quebec.

Senator EULER: For the full amount?

Mr. LINTON: For either the tax that he pays in Ontario, or the Quebec tax, whichever is the lesser. He might pay a little more by differential rates.

Senator EULER: But he is not suffering by having property in both provinces?

Mr. LINTON: No.

Senator MACDONALD: I think the statement I made is correct—dealing just with Ontario and Quebec.

The CHAIRMAN: Can't we move on?

Dr. EATON: Just following up what has been said. Ontario will recognize the fact that Quebec will tax property situated in Quebec and give a credit for it. If they carried out exactly the same principle, and recognized the fact that the dominion, instead of British Columbia or Manitoba, is doing the taxing—if they did, they would recognize the tax and they would not net anything out of it. The remedy is in their hands. I am not saying they should do it, but once they have recognized the principle of the priority of "province of situs" over "province of domicile" in this case they would give an abatement with respect to the province of Quebec. The thing just flows that they should do the same as on any other property, only it is the Federal government that is doing the taxing right in the province. The thing is there for them to use if they want it.

The CHAIRMAN: The next clause is Section 7 (1). There have been a number of questions on that, Mr. Minister. One is that there is a feeling that the section has become too impersonal, in the sense that you provide exemptions because a man has a wife and it doesn't matter whether any of the property is left to the wife or not, and the husband, who is infirm, gets the exemption whether anything is left to him by the wife or not. The feeling expressed by Senators is that you should get a little more personal element in this, and tie in these exemptions to the gifts or the giving of the benefit to the wife, and reduce the amount of exemption in the case of strangers. That is one point that has developed here; and that is in line with your thinking, is it not, Senator White?

Senator WHITE: Yes.

The CHAIRMAN: Would you like to elaborate on it?

Senator WHITE: Well, Mr. Minister, as you are well aware, up to date both the provinces and the federal authority have recognized a degree of relationship and based their tax exemptions accordingly; where here you make no recognition of the family;—husband, wife and relatives, everybody is placed in the same class. Speaking personally, I think the wife and the children should have a much higher exemption than you have here, and that the disability of the infirm husband should be removed, and then the basic exemptions should be lowered as the relationship recedes, and should be decidedly lower when you get to strangers. If you do it that way you will benefit the people who should receive the greater benefit, and collect just as much, and probably more tax than you do under this category.

Hon. Mr. FLEMING: There are three answers, if not four, to that point. It has been raised before. In the first place, this section simply carries into the exemption aspects of the measure, the estate tax principle. In dealing with a matter which has been in effect seventeen years, based on a succession duty, and maybe in a particular case, a number of successions, you look at the individual successor and you say "What relationship was he to the deceased?" and that is the governing feature in determining the exemption. But, with respect, when we enter the estate tax principle there are some of these ideas that we have to leave behind. We are looking at the estate en masse, as an entity, and we are discussing that estate in terms of its aggregate value. When you come to determine what shall be subtracted from that total in respect of certain family relationships, with great respect, you cannot logically, and I think, fairly, import at this point the succession duty principle and start looking at the relationship of a number of successors. That is running entirely counter to the estate tax principle.

The second point is that we have sought in this measure to be punctilious in confining ourselves to matters clearly within federal jurisdiction. It is quite true that Parliament can legislate and pass tax measures with due regard to family relationships. But in this field, what I take is implicit in the point that has been raised, is that Parliament should use its taxing power to measure what a deceased person has provided for his family. In other words, according to the old expression, that he should be "just" with his dependants before he is "generous" with strangers.

In giving strict observance to the exclusive jurisdiction of provinces over property and civil rights, it seemed to us that that was a matter we ougt to leave to the provinces. As you know, the provinces have full authority over succession in all forms. Most of the provinces have provided with respect to the estates of persons who die intestate a provision that the legislature considers necessary for the widow or other dependants. And, similarly, where a testator has chosen to part with his property in favour of others, overlooking his dependants, I think most of the provincial legislatures have passed statutes to prevent the estate being parted with to the disadvantage of the dependants. In Ontario we have a Dependants' Relief Act to govern such situations, and I think most of the other provinces have similar legislation.

But there is a third point. This idea of trying to marry the estate tax principle with the succession principle: how are you going to do it? We say here that if there is a widow, all right, take off $60,000. If the deceased is a woman who is survived by her husband who is infirm and unable to earn a living, and there is a dependant child, all right, take off $60,000. In any other kind of estate it is $40,000 off. In the case of children who are dependant on the deceased, it is $10,000 for every dependent child in accordance with these terms. If the child is an orphan, it is $15,000.

Try to wed the two principles together and let us see what happens. You say "in a case of a man dying who leaves his estate to his wife to the exclusion of the children, there is no provision for the children at all." Let us say the estate is worth $70,000. In that case the estate is going to be the loser if you introduce the succession principle because with the dependent child the estate under this measure would have a $70,000 exemption, but on the basis of giving recognition to the succession principle there would only be a $60,000 provision if you allow up to $60,000 to go to the widow. But let us take a less simple case. Let us take a case where there are four dependent children. Under this provision there is a total $40,000 off for these children where their mother survives with them. But suppose the testator doesn't treat his children equally and says that John will have $12,000, William $15,000, Mary will have nothing and Henry $2,000.

How are you going to work out these together? Are you going to say that in the case of Henry he will have 2/10ths of the permissible exemption? In that case what are you going to do with the $15,000 that went to William? Are you going to give him exemption for $10,000 and apply the tax with respect to the remaining $5,000? These are still simple cases. You could go on and multiply and get much more difficult cases. What are you going to do, for instance, where the deceased leaves $23,000 to his widow? Are you going to allow 23/60ths there? How are you going to work out all these fractions?

Mr. Chairman, I think fundamentally we have to face up to this. If we are going to have an estate tax with all the benefits that an estate tax creates for the taxpayer—and there are many benefits—then we have got to be prepared to carry the estate tax principle all the way through. This is the estate tax principle that is recognized in the United Kingdom. There is nothing new or novel or extraordinary about it.

Senator WHITE: How do you arrive at the figure of $60,000 the deceased leaves to his wife presuming it goes to the wife, and then $40,000 for a total stranger?

Hon. Mr. FLEMING: In the bill introduced at the last session we went up to $60,000 where there is a wife surviving because the wife, according to the common conception, is going to look to her husband for support. In that bill only $30,000 was provided for the other case, the general case. There were many representations urging that we should create a blanket exemption in all cases of $50,000, and frankly we had to reject them on two grounds. First of all, it would have created too big a dip in our revenue, and in the second place we thought that was reducing to too fine a point the consideration that ought to be given in the case where the deceased dies leaving a widow.

Now, this measure increases the basic exemption to $40,000. That is a pretty generous exemption. It provides an additional $20,000 in the case where a widow normally dependent survives the male deceased.

You ask where the figures come from? These figures were arrived at with a desire to increase the exemptions created now by this Succession Duty Act. Originally the basic exclusion under this act from 1941, in the first 10 years of its existence, was $5,000. There was a special exemption for a widow or child. Then I believe in 1948 a provision was made whereby no estate under $50,000 should be subject to tax. We have preserved that exemption in this bill. No estate under $50,000 is subject to any tax, but regardless of the size of the estate we have provided for this basic deduction of $40,000. If there is a widow of a deceased husband it is $60,000, with these other benefits that exist in the case of children. This is done on the quite recognized theory that in this case the deceased is leaving dependants, and for that reason the law should within the estate tax principle take account of the effect of dependency.

Senator WHITE: You have put sons and daughters over the age of 21 years in the same class as strangers. If an estate went to children all over the age of 21 years their exemption would be $40,000. How would you justify that if it all went to a stranger?

Hon. Mr. FLEMING: We are not creating exemptions for strangers, we are not creating exemptions for persons, but we are creating exemptions applicable to the mass of the estate in the simple circumstances where those stand in a normal dependent relationship to the deceased surviving him.

Senator WHITE: The sons and daughters over 21 and the stranger all would come in under the $40,000 exemption, would they not?

Hon. Mr. FLEMING: We have to go a little further than that. Is this a case where the deceased is not survived by a widow?

Senator WHITE: He is a widower with an estate of $100,000, and leaves $40,000 to the sons and daughters over 21 years of age, and $40,000 to a stranger. Have both an exemption of $40,000?

The CHAIRMAN: That is right.

Hon. Mr. FLEMING: Could I just add this: Now, there are two alternatives to what is written in this bill. The one is to scrap the estate principle entirely and go back to the succession duty. We have no thought of rejecting the estate tax principle here, it is a good principle and it is going to bring benefits.

Senator BOUFFARD: I do not think it is necessary to do so.

Hon. Mr. FLEMING: And we have gone so far in this measure in creating exemptions, that when this measure comes into effect it is going to cost the treasury about $7 million a year according to our best calculation. That is now something over ten per cent of the yield on death taxes, and we frankly cannot go any farther in creating any more exemptions in the act.

Senator BRUNT: What is the reasoning behind this, that where there is an infirm widower left, a husband left completely paralyzed, who cannot possibly earn anything, in order to get that $60,000 exemption there must be a dependent child? Surely it takes more money to keep an infirm widower than a healthy widow?

Hon. Mr. FLEMING: Mr. Chairman, the situation simply is that the law proceeds on the assumption, which I think is a normal, valid assumption as between husband and wife, that the wife is dependent upon the husband, and in that case the law must be generous; the law assumes that the husband is not dependent upon the wife.

Senator LAMBERT: Supposing there is a joint estate, and either the husband or the wife dies before the other; the estate is left to the surviving spouse, and at death the residue was divisible equally among the children, whether they were dependent children or not? Why should not the exemption be equal? In the one case if the husband dies first and the wife is left there is an exemption of $60,000. If the wife dies first, then I assume that according to this the exemption is only $40,000, if there are no dependent children. If that is so, the estate is being impoverished to the extent of $20,000, is it not?

Hon. Mr. FLEMING: Yes; the bill does not treat the two cases on the same footing, and it does not treat them so for the reason that there is, I think, a very dependable presumption that the wife is dependent upon her husband, and therefore the law must be more generous in that case than in the other case where it is the wife who dies. In that case the law presumes, I think fairly, that the husband is not dependent upon the wife.

Senator LAMBERT: But supposing the wife is not dependent upon the husband and is equally interested in the estate with the husband, and the one predeceases the other, where is the equity there?

Hon. Mr. FLEMING: I do not think we can write a measure taking into account every such circumstance. Here we have been very generous even on the basis of the $40,000. I do not think one should approach this on the assumption that $40,000 looks very small alongside the $60,000. The $40,000 is a new kind of exemption, and a very considerable one, if I may say so with respect.

Senator BOUFFARD: I think you are right, Mr. Minister, when you say the exemptions are more advantageous than they were, but it seems to me that there are two reasons for a man to economize: first of all, to fulfill the obligations which are imposed upon him by law all over Canada—not only in the province of Quebec; secondly, that he is attached to his children, and generally speaking he does not work for strangers, but for his wife and children, unless he is a man who has no heart, or has something wrong with him. I do not see anything wrong about the amount of the exemptions allowed. The amount of $60,000 seems to be reasonable in the circumstances, and $50,000 seems to be reasonable in the circumstances, but I would say it is only reasonable if it goes to the wife and children. I cannot see why a man who has $100,000, is married and has four children, should enjoy an exemption of $100,000. I do not see why, if he is a proper man, and allows that money to go outside the family, that the person who enjoys that exemption should get it and the family get nothing. That is why I say the principle is wrong; you are giving to outsiders the same privilege as the wife and children should get. I would favour a law which would not give any exemption outside of the family, and when I say "family" I mean the wife and the children. It seems to me that the exemption of $60,000 should be given to the wife and the children, up to $10,000. If they do inherit the amount, that will not be taxable, but if they don't, I do not see why an exemption should be given.

Another point I want to make is that I do not think the interests of the family should be sacrificed for the purpose of simplicity. I think Canadian families are more important than simplicity.

Another thing, in the calculation of the rates, I think it is much more advantageous to have an estate tax than it is to have a succession duty. You calculate the full amount, and you calculate the tax, and the same tax goes for both. But I say that if the inheritance goes to the wife and the children it seems to me that the state should cut the tax in order to recognize the bond existing between the man and his wife, and not be in favour of the inheritance going to a stranger. The estate is calculated in the same way, the amount is exactly the sale, and the only calculation that has to be done is to cut by one-third or by one-half up to a certain amount of money.

Let us say for instance that there is a taxable estate of $200,000. The tax is $44,000. If the estate goes to the wife and to the family or to the children, and that is the only thing you have to consider, cut the tax in two and make it $22,000, and then do not give any exemption to any stranger, not one cent, and that is what has been given in all the provinces that have imposed taxation outside of the fact that they have imposed a tax on the succession they do not give a cent or if they do it is almost nothing up to $5,000, if it does not go to the family. If it goes to the family they raise the exemption and the tax is lower. Here you want to have an estate tax, all right, but give a chance to the family, give more money to the family and cut the tax in two up to a certain amount of assets, if it goes to the wife and family. That is what I am thinking the estate tax should do.

Senator HAIG: Mr. Chairman, I probably practised law as long if not longer than any man at this table. I have been a member of the Manitoba Bar for 54 years and during that time I have drawn as many wills as any senator here, and I must say that I never drew a will in those 54 years by which a man gave any money away. First he gave it to his wife and his children and he then

probably gave some bequests here and there, perhaps to someone in his employ or people connected with him, but the bulk of the money went to the wife first and then to the children and I have never seen a case in my whole 54 years of practice that has been otherwise. I have never seen a case in our courts that was different to that, and we in Manitoba, Saskatchewan and Alberta have answered our friend from Quebec by passing two laws in our province, one is that when a man dies there can be no wife left out because one-third of the estate goes to her automatically, with or without a will or anything else—one-third of it. Now, secondly, she can apply to the court after that on behalf of herself and her children for money out of the estate ahead of anybody else and if the courts of our province feel that she has not got sufficient to carry on and there is money in the estate to do it the court can direct how much will be paid to her in our province. It seems that the provinces in which my friends live should be the ones to pass these laws along similar lines to the ones we have in Manitoba and not to try to have the same results from this bill. That is my experience and I doubt if anybody has had any better or worse experience than I have had.

There is one more question I want to raise. The honourable senators from Toronto and Quebec said something about the tax rental agreement. The truth is that these agreements were made after a long investigation and a long political wrangle in which the Parliament of Canada agreed to pay so much to each province on this basis, that we claimed that the manufacturing companies made their money in Manitoba, Saskatchewan and Alberta and paid it out in Toronto, and we say that is wrong, and these agreements have settled the problem between the different provinces, and I for one do not want to see this brought up again.

Hon. Mr. FLEMING: Mr. Chairman, the experience of the department in passing on wills over the past 17 years completely bears out what Senator Haig has said about his own experience.

The CHAIRMAN: Now we have three items left and it is up to the committee to settle the order in which we will take them up. One is the inclusion of foreign real estate, another one is the question of an optional date of value, and the third one is the question of special valuation sections in relation to controlled companies.

Senator BRUNT: There is one more, the question of solicitors fees.

The CHAIRMAN: I assumed that Mr. Linton was going to look into that and give us some formula.

Mr. LINTON: The suggestion made of prescribing a table to do it I think is possible.

Hon. Mr. FLEMING: Mr. Chairman, let me enter a word here. Not quite so fast.

This matter of allowing fees to solicitors or even to executors was considered.

Senator LEONARD: Just solicitors.

Senator WHITE: I want executors. Put them both in.

Hon. Mr. FLEMING: Where do you draw the line? Are you going to include only cases of solicitors' fees where the probate or letters of administration were issued on simple procedures or are you going to include cases where there have been contests over the testamentary capacity of the deceased? There is no such thing as a flat rule to follow or a table that is going to accomplish anything.

Senator BRUNT: In Ontario there is a tariff.

The CHAIRMAN: In Ontario there is a flat sum of $100 allowed.

Senator BRUNT: No, there is a tariff.

The CHAIRMAN: That is not allowed.

Senator BRUNT: I am not saying it is allowed, but it is there and it is available.

Hon. Mr. FLEMING: Of course you have got a surrogate court tariff but the law of the province permits a deduction of $100 for this purpose but the Dominion Succession Duty Act has not allowed anything. We considered this very carefully and we are up against a very great difficulty of trying to work out a rule to apply to these cases and we came o the conclusion that there is not any equitable rule that you can write that will apply to all cases. That is the practical difficulty you are up against. And the same thing applies to any payment to executors.

Senator MACDONALD: We thought that you might establish a tariff where there would be so much in the province of Ontario for executors fees fixed by the court, so much for preparing an application for probate, so much for preparing succession duty papers and so much for passing the accounts and have a schedule depending on the value of the estate and allow that amount.

Hon. Mr. FLEMING: I would urge we should not be put in the position of passing a complicated provision of that kind. We have taken the better course here by increasing the general exemptions in clear and simple terms, and I would urge that that is the sounder course to follow instead of putting in various ways of increasing exemptions by complicated rules.

Senator WHITE: Does that mean that you do not want to allow it?

Hon. Mr. FLEMING: Beyond that you can include dozens more of these individual easements of taxes that are being proposed and not come up to the increase in the general exemptions that we are offering in this bill. I simply ask that account be taken of the large increase in the general exemptions as an offset to the various suggestions of writing in individual reductions of the tax by complicated rules.

The CHAIRMAN: Which item shall we take up now?

Senator LEONARD: As far as taxing foreign real estate is concerned, I am quite content to let that stand. While I do not agree with it in a principle I hope that when it comes to the negotiation of treaties with other countries, particularly with the United Kingdom that the Minister will have in mind the effect of taxation on foreign real estate, so I hope that we will still continue to get capital particularly from Britain invested in real estate in Canada.

Hon. Mr. FLEMING: I can assure honourable senators, in any negotiation we have with the United Kingdom we will certainly encourage them to send capital to this country.

Senator LEONARD: I am happy about that.

The CHAIRMAN: The next item is optional expiration date.

Senator BRUNT: I think everyone here feels it is a bit unfair to value the assets as of the date of death; it is just fixing an arbitrary date at a time at which no executor can deal with the assets. I think all of us feel—

Senator THORVALDSON: You are going too far.

Senator BRUNT: A lot of us feel that a reasonable period should be allowed to let the executor get into a position to deal with the assets.

The CHAIRMAN: The suggestion I made—and some may have approved of it—was that the valuation be taken at the date of death, three months after date of death, or at any sale in the interim. The object in mentioning three months was that it would not interfere with the collection of revenue, because you have to get your return in and pay your tax in six months. Have you any comment on that, Mr. Minister?

Hon. Mr. FLEMING: Thank you, I have.

The purpose of such a provision is—and let us be frank about it—to give the taxpayer an opportunity to make a choice between two dates; if that is done he will certainly choose the date on which the assets had their lower value. It has nothing to do with putting him in a position to administer quickly or to part with the assets quickly. That does not come into the picture at all, so far as quick realization is concerned.

Those of you who have practised law have had experiences in which it was necessary to ask for the release of a particular asset in order to complete a quick sale for the purpose of providing a further payment of duty or payment of deposit on account of duty. But what this is intended to accomplish is to give the estate the benefit of any decline in value. We may be very sure that if the assets should rise in value in three months, the date selected by the executor would be the date of death. There again, it is one more provision designed to give the benefit to the taxpayer at the expense of the treasury by reducing the tax.

Again I must say—and I am sorry to keep repeating this—that we have taken a better way: we have provided these large exemptions which can outweigh any number of individual proposals of this kind for the benefit of estates, as against the treasury. May I add, the United Kingdom makes no such provision.

Senator BRUNT: The assets might increase in value, not necessarily decrease. If the assets were sold in three months' time at a higher price than they were worth at the time of death, then of course the taxing authority would benefit. It is not a one-way street we are suggesting.

Hon. Mr. FLEMING: May I ask the committee to bear in mind the complications such an arrangement would introduce, the additional work that would be placed upon those charged with the administration of this legislation.

Senator MACDONALD: It would hold up all estates for three months.

The CHAIRMAN: No.

Senator MACDONALD: Yes. If the assets were going up in value, or the executor knows they are going up, he is not going to wait the full three months, but on the last day before three months he decides to take the value at date of death.

The CHAIRMAN: That is the purpose of suggesting it. The safety valve, however, is that if he sells anything in that period, he takes that sale price; so, if he is in a rising market he will be stuck with that sale price.

Senator MACDONALD: In that case you would be holding estates up for three months.

Senator ASELTINE: If the assets were going up, he would not sell until after the three months were up.

Hon. Mr. FLEMING: I think it is unchallengeable that such provision would have the effect of delaying assessments and payment of taxes.

The CHAIRMAN: The last item I have on the list is the question of controlled companies, section 27 in part, sections 28 and 29. May I state the position briefly, Mr. Minister?

If a controlled company was limited to a personal corporation I could understand it much better than in the broader field with the definition of "controlled company" in the bill. Under this definition you could conceivably have a manufacturing operation in a family where 51 per cent of the stock was held by various members of the family, and 49 per cent held by outside interests. They would be stuck under these controlled company sections. The two things that are objectionable are these: first, if a deceased person, who is a member of a group who hold a majority interest in stock, his minority

interest is valued as though it were a majority interest. Secondly, if such a company owes me money, and I die, and the debt was a time loan not due for two or three years, it is to be valued as though it were due at the time of death.

Those two things, frankly, are quite incomprehensible to me, and I would like to have a word from you—I was almost going to say, in justification of it.

Hon. Mr. FLEMING: Mr. Chairman, I submit that the provisions here are fair. An amendment was made in section 28 which I think does assure equity and fair treatment in these cases. In subsection 1 of that section, which deals with the shares of a minority shareholder in a controlled company, a provision was introduced at lines 19-21, so that the shareholdings that belonged to the deceased shall—and I read the words: "unless it is established that the deceased and such one or more other persons"—that is the other members of the family who together make up the control of the corporation—"were persons dealing with each other at arm's length . . ." It is left here to the taxpayer to establish that these persons, although associated in a family relationship, were actually dealing with each other at arm's length; and that what would otherwise appear to be a family control was not in effect a united form of ownership that guaranteed control of the company.

The CHAIRMAN: May I interrupt you? That was not the point I was making. It was this: when a man who has the largest minority interest dies, those shares may well come on the market. Now, in fact the shares are a minority interest, and the only way they can become a majority interest would be if the other members of the family came along and contributed their shares so as to make them the majority. But the other members of the family are too smart to do that; they realize they are the ones in the bargaining position—not the man who may have 40 per cent—because they can cause the control to flow one way or the other, and they are going to get a better price than the estate. But you are going to value the shares on a majority holding of shares.

Hon. Mr. FLEMING: If you do not value them as proposed in this bill, I think you are closing the door to ever having fair value in respect of control which did exist in practically every such case; and in so far as the case where the parties have been dealing at arm's length, we have left the door open to them to so prove.

Senator POWER: May I draw your attention to the fact that "at arm's length" is fully defined in the Income Tax Act? I don't know that it is here, but if it is not, I think it should be.

The CHAIRMAN: I don't know that you can necessarily import an income tax definition.

Hon. Mr. FLEMING: It is not defined in this act. I think there would be no doubt about the interpretation. In this particular case it may be that the definition in the Income Tax Act is a bit too rigid to be imported here.

The CHAIRMAN: The other point I raised,—would you address yourself to that—is that the time debt in those circumstances, owing to the deceased, is to be valued as though it were immediately due.

Mr. FLEMING: Will you hear Mr. Linton on that?

Mr. LINTON: What this is designed to reach is a situation where a family company is set up and the members of it lend money to it and get back debentures or something of that kind from it which are redeemable at the will of the company but which, without prior redemption, are made due at some fantastic date in the future, with no interest, or very little interest. It could be so set up that it is understood by all that when the tax is out of the way the thing can be redeemed by the company at full value.

The CHAIRMAN: That is the kind of situation that should be covered.

Mr. LINTON: It is covered.

The CHAIRMAN: But what I am complaining about is that there are a lot more—genuine—situations where there may be a real advance and real debt, and you are putting them in the same category. I say there should be some discretion of the Minister to determine as between a plan which is a scheme to defeat the revenues, and where there is an honest bona fide loan. You put them all in the same basket.

Mr. LINTON: A case where there is a family loan which runs a long time with no interest is very suspicious to me. That is one that will be hit here. But take a loan which bears a proper rate of interest, no matter what the term, the term will not tend to reduce its value anyway.

The CHAIRMAN: There is a present value of a debt due in a few years.

Mr. LINTON: The proper value now would be its fair market value now without discount if it bears proper interest.

The CHAIRMAN: I dont' think so.

Mr. LINTON: In the opposite case, in allowing a debt claimed I think we would be forced to agree that it was.

The CHAIRMAN: I can show you some bonds that are sold on the market for anywhere from 95 to 98, due in six months, and carry an interest of 5½ to 6 per cent.

Mr. LINTON: That is not very much of a reduction. I don't think in a private company we could maintain any such reduction as that for a debt.

The CHAIRMAN: At any rate we have your viewpoint on it. And speaking on behalf of the committee, we want to thank the Minister very much for the time he has given on the explanations he has given; and I want to thank again the members of his staff. I hope you have enjoyed it as much as we have being informed. But now we have to deal with it.

Hon. Mr. FLEMING: Mr. Chairman and honourable senators, I thank you for the privilege extended to me of allowing me to come before you, and for your patience in putting up with some of these, perhaps, altogether too lengthy attempted explanations.

The CHAIRMAN: There is no suggestion that anything was too lengthy.

Hon. SENATORS: Hear, hear.

The CHAIRMAN: When shall we meet again? The full transcript will not be available until Monday or Tuesday. My suggestion is that we meet Wednesday morning at 10:30.

Hon. SENATORS: Agreed.

Whereupon the committee adjourned.